College

Relations

Commission

Annual Report 1987–1988

90-06047/

COLLEGE
RELATIONS
COMMISSION
M5R 3J8

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111 Avenue Road
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To: The Members of the Legislative Assembly Province of Ontario

ANNUAL REPORT
1987-1988

Dear Members,

I have the honour to present the Thirteenth Annual Report of the College Relations Commission, covering the period from September 1, 1987, to August 31, 1988.

Katherine E. Swinton
Chair
College Relations Commission
August 31, 1988

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I DUTIES OF THE COMMISSION

The College Relations Commission was established by section 55 of the Colleges Collective Bargaining Act, Revised Statutes of Ontario 1980, chapter 74. Its duties are:

(a) to carry out the duties imposed on it by this Act and such other functions as may, in the opinion of the Commission, be necessary to carry out the intent and purpose of this Act;

(b) to maintain an awareness of negotiations between the parties;

(c) to compile statistical information on the supply, distribution, professional activities, and salaries of employees;

(d) to provide such assistance to parties as may facilitate the making or renewing of agreements;

(e) to select and, where necessary, to train persons who may act as mediators, fact finders, arbitrators, or selectors;

(f) to determine, at the request of either party or in the exercise of its discretion, whether or not either of the two parties is or was negotiating in good faith and making every reasonable effort to make or renew an agreement;

(g) to determine the manner of conducting and to supervise votes by secret ballot pursuant to this Act; and

(h) to advise the lieutenant-governor in council when, in the opinion of the Commission, the continuance of a strike, lockout, or closing of a college or colleges will place in jeopardy the successful completion of courses of study by the students affected by the strike, lockout, or closing of the college or colleges.

The chief executive officer and secretary of the Commission is R.H. Field. The Commission's offices are at 111 Avenue Road, Suite 400, Toronto, Ontario M5R 3J8.

II MEMBERS AND ORGANIZATIONAL STRUCTURE

The College Relations Commission is composed of five members appointed by the lieutenant-governor in council. The term of appointment may range from one to three years, and each member of the Commission is eligible for reappointment upon the expiration of the term.

Dr. Bryan Downie's term as chair expired on October 30, 1987. Ms. Katherine E. Swinton was appointed as chair on November 1, 1987. Mr. David Allan Hayes was appointed vice-chair on May 11, 1988, replacing Mr. Gary O'Neill, whose term expired on December 21, 1987. Ms. Jane E. Scott resigned as commissioner on February 10, 1988, to accept an appointment as trustee with the Etobicoke Board of Education. Mrs. Trèva Legault Cousineau was appointed commissioner on May 11, 1988, to replace Ms. Scott.

MEMBERS OF THE COMMISSION

Chair: Katherine E. Swinton, B.A. Hon. - History (University of Alberta), LL.B. (Osgoode Hall Law School, York University), LL.M. (Yale University), Member of the Ontario Bar

Ms. Swinton (professor, Faculty of Law, University of Toronto) has served as chair of labour arbitration boards in the private and public sectors and has served as vice-chair of the Ontario Crown Employees' Grievance Settlement Board. She has published extensively in the area of labour relations and has co-edited Studies in Labour Law.

Vice-Chair: David Allan Hayes, B.A. (McMaster University), M.Ed. (University of Toronto)

Mr. Hayes is a retired educator. He has served as a supervisory officer with the Lincoln County Board of Education, both as a superintendent of curriculum and as an area superintendent.

As a supervisory officer with the Lincoln County Board of Education, Mr. Hayes developed and implemented the following programs: a complete evaluation system for all teaching and supervisory personnel, and special programs to assist general level students and to reduce the dropout rate among secondary school students. Mr. Hayes also developed a complete curriculum design, implementation, and review program for all programs – Kindergarten to Grade 13 – and a cooperative professional development program for teachers.

Commissioner: John Irwin Zeiler, B.A. (University of Toronto), LL.B. (University of Toronto)

Mr. Zeiler is a partner in the law firm of Leve and Zeiler, whose practice includes real estate and corporate, commercial, and estate work. He was the solicitor for the developer who registered the first condominium in Ontario. Mr. Zeiler has taught for the Ontario Real Estate Association, the Appraisal Institute of Canada, and more recently in the Department of Administrative Studies at York University, where he lectures in real property law and negotiations.

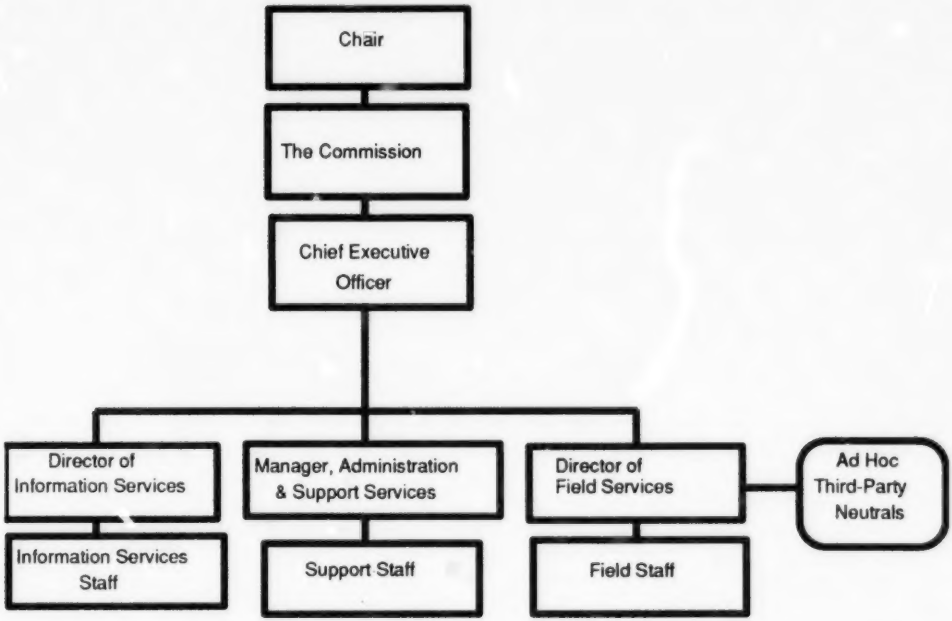
Commissioner: William John McNeil, B.Com. (University of Toronto)

Mr. McNeil has had fifteen years' experience as a teacher and vice-principal in North York and fifteen years' service as a field officer with the Ontario Secondary School Teachers' Federation. His past positions include president of District 13 of the OSSTF, governor of the Ontario Teachers' Federation, advisory board member on the provincial executive of the OSSTF, and former trustee of the Ontario Teachers' Insurance Plan. He is currently enrolled in the master's degree program in industrial relations at the University of Toronto.

Commissioner: Trèva Legault Cousineau, B.Sc. (University of Ottawa).

Ms. Cousineau (coordinator of French-language services at Sudbury Algoma Hospital) is a member of the board of governors of Cambrian College, Sudbury. She has served as chair and vice-chair of the Timmins District Roman Catholic School Board, member of the Commission on the Financing of Elementary and Secondary Education in Ontario, president of l'Association française des conseils scolaires de l'Ontario, chair of the Ontario School Trustees' Council, and member of the Ministry of Education's Advisory Committee on Special Education and Advisory Council on the Role of the Trustee.

ORGANIZATION CHART: THE COLLEGE RELATIONS COMMISSION



III NEGOTIATION PROCESS

The mandate of the College Relations Commission – to maintain an awareness of and facilitate collective negotiations between the Ontario Council of Regents for Colleges of Applied Arts and Technology, as employer, and the Ontario Public Service Employees Union, representing the academic and support staffs – is contained in the Colleges Collective Bargaining Act. Passed in 1975 and revised in 1980, this Act gives the academic and support staffs the right to strike and gives the Ontario Council of Regents for Colleges of Applied Arts and Technology the right to lock out. These rights, however, are regulated. For example, a strike or lock out is not legal until:

(a) a fact-finder has met with the parties and his or her report has been made public;

(b) a fifteen-day cooling-off period takes place after the fact-finder's report is submitted to the parties;

(c) after the members of the employee organization have voted – by secret ballot in a supervised vote – on the last offer of the Council of Regents; and

(d) after the members of the employee organization have voted – by secret ballot in a supervised vote – to take strike action.

At any time during the process, the parties may choose voluntary binding arbitration or final-offer selection as an alternate means of dispute resolution.

The Commission maintains its awareness of the negotiation process from the time an intent to negotiate is filed by the parties until a collective agreement is signed. Particular attention is paid to the timing and appropriateness of appointments of fact-finders and mediators.

The conduct of votes – last-offer, strike, or ratification – has assumed major importance for the Commission. This is due not only to the number of votes that have been supervised, but also to the number of members of the employee organizations and the number of campuses involved.

IV STAFF AND FACILITIES

The Commission shares staff and facilities with the Education Relations Commission and has participated with that commission in training fact-finders, mediators, arbitrators, and selectors. For a more complete picture of this year's activities, reference should be made to the Thirteenth Annual Report of the Education Relations Commission.

V NEGOTIATIONS AND APPOINTMENTS

1. SUPPORT STAFF

On August 28, 1987, a memorandum of settlement covering all support staff bargaining-unit employees was signed by the negotiating committees for the Ontario Public Service Employees Union and the Ontario Council of Regents for Colleges of Applied Arts and Technology.

On September 24, 1987, the settlement was ratified by the membership as follows:

Number of ballots cast	4231
Number of spoiled ballots	12
Number of YES votes	3114
Number of NO votes	1085
Ballots segregated and not counted	20

The agreement is of two years' duration, covering the period September 1, 1987, to August 31, 1989.

2. ACADEMIC STAFF

(a) The Settlement and Ratification

On March 3, 1988, a memorandum of settlement covering all academic staff bargaining-unit employees was signed by the negotiating committees of the Ontario Public Service Employees' Union and the Ontario Council of Regents for Colleges of Applied Arts and Technology.

On April 12, 1988, the settlement was ratified by the membership as follows:

Number of ballots cast	5063
Number of spoiled ballots	9
Number of YES votes	4550
Number of NO votes	486
Ballots segregated and not counted	18

The agreement is of two years' duration, covering the period from September 1, 1987, to August 31, 1989.

(b) Objection to the Conduct of the Vote

On April 13, 1988, an objection to the conduct of the vote was filed. It alleged that the "Notice of Taking of Vote" and the details of the collective agreement had not been posted. Posting is required by the policy of the Commission.

Following an investigation by the chief executive officer of the College Relations Commission, the objection to the conduct of the vote was dismissed.

VI OTHER DEVELOPMENTS

During the reporting year, there were the following developments, which may influence relationships between the parties and future collective negotiations.

I. Grievance Mediation

This program is made available to the parties as part of the continuing effort by the College Relations Commission to fulfil its mandate under the Colleges Collective Bargaining Act.

Grievance mediation is a process designed to resolve grievances (differences that arise from the interpretation, application, administration, or alleged contravention of the collective agreement) before the point of arbitration is reached. This mediation procedure is not a substitute for arbitration; it is, however, an attempt to settle a grievance with the assistance of a mediator appointed by the Commission.

The Commission will appoint a neutral third party when the grievance procedure has been exhausted and before arbitration, if both parties agree. This third party will spend one day with the parties, during which time he or she will try, in an informal and confidential manner, to settle the grievance. If the issue(s) cannot be settled, the parties maintain their right to proceed to arbitration.

The advantages of the grievance mediation process include the following:

- **Positive attitudes**
  Grievance mediation helps dissipate the negative attitudes that can develop within a college system when grievances inhibit or become an aspect of negotiations. The mediation effort assists in avoiding the black-and-white, win-or-lose situation that can lead to a deterioration of relations between the parties.

- **Greater control**
  Grievance mediation allows the parties themselves to shape the final settlement. If the grievance proceeds to arbitration, the settlement is imposed by an outsider to the college system.

- **More confidentiality**
  Grievance mediation is an attempt to solve a matter before it is reviewed and discussed in an arbitration hearing. The process provides an informal context, enabling privacy and confidentiality.

- **Lower cost**
  Grievance mediation is generally less expensive than arbitration. The College Relations Commission underwrites the fees and expenses of the mediator.

- **Less time**
  Grievance mediation is a method of solving disputes directly and as quickly as possible. Delays in obtaining a decision through arbitration can be a source of frustration to all concerned.

In summary:

- The process is voluntary.
- Both parties must agree to the assistance.
- The process is not designed to eliminate the adversary system.
- Issues in education can be both unusual and complex. For these reasons, the College Relations Commission appoints grievance mediators with particular knowledge of and experience in dispute resolution in education.

2. Colleges Collective Bargaining Commission

Dr. Jeffrey Gandz was appointed commissioner of the Colleges Collective Bargaining Commission by order-in-council dated January 28, 1987.

On January 27, 1988, Dr. Gandz submitted the report of the Colleges Collective Bargaining Commission to the Honourable Lyn McLeod, Minister of Colleges and Universities.

Dr. Gandz's recommendations follow as they appeared in the report.

Summary of Recommendations

(Recommendations marked with an asterisk will require legislative action.)

Recommendation #1*

An amended Colleges Collective Bargaining Act should be introduced. This amended Act should retain certain key features of the current Act, including the right to strike and lock out, the deemed strike provision, and designated bargaining units.

Major amendments should include a newly designated bargaining agent for the colleges, reconstructed bargaining units, unrestricted scope of bargaining, the encouragement of local bargaining to supplement or vary the provincial agreement, and radically altered timelines and procedures governing strikes and lockouts.

Recommendation #2

Collective bargaining should continue to take place at the provincial level, although local bargaining should be strongly encouraged within this provincial framework.

Recommendation #3

Local bargaining should be encouraged by:

(a) Adding an amendment to the CCBA which includes a preamble legitimizing and encouraging local bargaining. This preamble should include the phrase:

"and whereas it is in the public interest to encourage local bargaining over issues of concern to a particular college of applied arts and technology and a local employee organization..."

(b) Amending the duty of fair representation in 5.76 of the CCBA as follows:

"An employee organization shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the employees, whether members of the employee organization or not, and shall pay due regard to local issues when bargaining on their behalf.

"The employer bargaining agency shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the colleges of applied arts and technology and shall pay due regard to local issues when bargaining on their behalf."

(c) Adding a new section to the CCBA entitled 'Local Bargaining' as follows:

"Notwithstanding anything in this Act, the parties, through their local representatives, may enter into local agreements applicable only to a particular college of applied arts and technology."

Recommendation #4

The government should allow the designated bargaining agent for the colleges to develop a realistic bargaining mandate within the framework of fiscal, policy, and program control of the colleges.

Recommendation #5

The government should refrain from interfering in the bargaining process unless, and until, a state of jeopardy has been declared by the College Relations Commission.

Recommendation #6

The funding mechanism used by the Ministry of Colleges and Universities and the estimates of program costs used by the Ministry of Skills Development should reflect reasonable estimates of costs and conditions of settlements to be negotiated by the bargaining agent.

Recommendation #7

The collective bargaining functions and responsibilities currently performed by the Staff Relations/Benefits Unit of the Ministry of Colleges and Universities should be transferred to the bargaining agent.

Recommendation #8*

The bargaining agent for the colleges should be a compulsory employers' association, provisionally entitled the Colleges Employee Relations Association (CERA). Each college, as a corporate entity, should be a member of CERA.

CERA should have a governing body consisting of the presidents of the colleges as the designated representatives of their colleges. This governing body should elect an executive committee of five presidents, representing a range of both size of college and geographical location. The executive committee should act as the negotiations steering committee.

Recommendation #9

No change should be made in the legislation covering the bargaining agent for employees, other than specific changes recommended in subsequent chapters of this report. (The Report of the Colleges Collective Bargaining Commission).

Recommendation #10

A Colleges Employee Relations Directorate (CERD) should be established and be financed by a levy on each college.

This directorate should report to CERA, through its executive committee, and be responsible for research related to negotiations, forecasting the costs of settlement, developing a negotiating mandate with the colleges and the Ministry of Colleges and Universities, conducting negotiations (assisted by a negotiating team selected from the colleges), and the processing of 'college', 'policy' or 'union' grievances with system-wide implications.

CERD should be headed by an Employee Relations Director, who would be a senior and experienced employee relations professional. Other staff should include an employee relations officer, an analyst, and clerical assistance.

Recommendation #11

The Colleges Employee Relations Directorate (CERD) should provide information on long-term trends in employee related costs to the Council of Regents.

Recommendation #12

The Colleges Employee Relations Directorate (CERD) should undertake consultations over salaries, benefits, and working conditions with the Provincial Administrative Staff Assocation (PASA), or any other organization which can demonstrate that it represents substantial numbers of non-unionized employees.

Recommendation #13

The Ministry of Colleges and Universities should adjust its funding to the Colleges so that they can establish CERD. This is estimated as $750,000 per year in current dollars. Since it is recommended that CERD take over many of the functions now performed by the Staff Relations/Benefits Unit of the Ministry, the net new expenditure is expected to be minimal.

Recommendation #14

The Ministry of Colleges and Universities should provide funding to the colleges and the College Relations Commission for the development of a comprehensive, system-wide, human resource information system for use at both local and provincial levels. This should be done by CERD in cooperation with OPSEU and the College Relations Commission. The one-time cost should be approximately $200,000.

Recommendation #15

Major decisions within CERA, including ratification of mandates and collective agreements, should be by a 'double majority' system, requiring a majority of the colleges which also represent a majority of the members of the respective bargaining units.

Recommendation #16*

Ratification of collective agreements by the union should also follow this double majority process but be based on a majority of colleges and a majority of votes cast overall.

Recommendation #17*

Amend the CCBA to provide for a category of 'system-wide' grievances. Such grievances will be considered to be between the Colleges Employee Relations Association (CERA) and the employee organizations.

Recommendation #18

Transfer the functions of the Staff Relations/Benefits Unit of MCU to the Colleges Employee Relations Directorate. Include in the mandate of CERD the responsibility for giving advice to the colleges on the administration of the collective agreements while ensuring that actual administration remains at the local colleges level except for 'system-wide' grievances.

Recommendation #19

CERD should develop, in cooperation with the senior human resource managers in the colleges, and the employee organizations, a training and development program in contract administration knowledge and skills, which is based on the colleges' collective agreements and which becomes part of the professional development of academic and support staff administrators and managers, as well as stewards and other union officers.

Recommendation #20

Competence in contract administration activites should be included as a performance criterion in the performance appraisal systems that the colleges use for managers and administrators.

Recommendation #21

CERD should adopt the practice of collecting, analyzing, and disseminating interpretations of arbitration awards issued within the system. This should include awards under workload and classification provisions, even though such awards may not be binding on other colleges.

Recommendation #22

Each college should have a senior human resource management professional, at the vice-president level, who participates actively in executive committee decisions even if they do not apparently involve narrowly defined employee relations matters.

Recommendation #23

CERD should develop an employee relations survey in cooperation with the colleges and OPSEU. This survey should be administered on at least a bi-annual basis to track the employee relations climate.

Recommendation #24*

Allow all employees collective bargaining rights under the CCBA with the exception of those who:

- exercise managerial functions;
- are employed in a confidential capacity in matters relating to collective bargaining;
- are students at a college working at a placement under a cooperative program;
- are members of professions which do not permit unionization (architecture, medicine, dentistry, engineering and law) if they are employed in the colleges in their professional capacities;
- are engaged and employed outside Ontario;
- are graduates of colleges of applied arts and technology during the period of twelve (12) months immediately following completion of a course of study at the college by the graduate if the employment of the graduate is associated with a certification, registration or other licencing requirement.

Recommendation #25*

Restructure the bargaining units defined in Schedules 1 and 2 of the CCBA to read as follows:

A1. Teachers, counsellors, and librarians who usually teach more than six (6) hours per week except supply teachers.

A2. Teachers, counsellors, and librarians who usually teach six (6) or less hours per week and supply teachers.

S1. Support staff who usually work more than seven (7) hours per week.

S2. Support staff who usually work seven (7) or less hours per week.

Recommendation #26*

The current bargaining agent should continue as the designated bargaining agent for the A1 and S1 bargaining units. While the A2 and S2 bargaining units would have the right to bargain collectively, any employee organization wishing to represent them should have to apply for certification and such certification should only be granted on a province wide basis based on a 'double majority' process.

Recommendation #27*

Allow OPSEU and CERA a period of twelve (12) months from the date of proclamation of amendments to the CCBA to negotiate terms and conditions of employment for the various categories of employees who will be accorded bargaining and representation rights. If they are unable to reach agreement, the terms and conditions of employment should be referred to binding arbitration.

This period of twelve (12) months should be adjusted depending on the date of proclamation of legislative amendments so that the resolution of this matter precedes the negotiation of a new collective agreement.

Recommendation #28*

The Colleges Collective Bargaining Act should include the following provisions relating to the negotiation of collective agreements for academic and support staff bargaining units:

(a) The termination date of the collective agreement shall be left to the parties themselves to negotiate.

(b) Notice to bargain shall be given 90 days before the expiry of a collective agreement and the parties shall meet within thirty days of the serving of notice to bargain in good faith.

(c) The union may vote to strike, or the employer may vote to lock out at such time as each may decide, but no strike or lockout shall be permitted until 30 days of notice of strike or lockout has been given and the collective agreement has expired.

(d) Such votes shall be supervised by the College Relations Commission. They shall be valid for a period of three (3) months after such time the parties will be required to hold another vote before strike or lock-out action is taken.

(e) Within three (3) days of notice to strike or lock-out being given, the College Relations Commission shall appoint a mediator who, within a further five (5) days, shall recommend whether a fact-finder should be appointed.

(f) In the event that a fact-finder is appointed, the appointment shall be made within three (3) days of the recommendation in (e) above. The fact finder shall meet with the parties and prepare a report for distribution to the parties and the public within 15 days of the appointment.

(g) No strike or lockout shall occur until five (5) days after the release of the fact finder's report or the final offer vote in (h), below.

(h) At any time up to five (5) days before a strike is to occur, the employer may request a vote on its final offer and such a vote shall be conducted by the CRC within five (5) days of such request being made and the strike date shall be postponed by five (5) days. This offer shall be presented to the union at the time that the request is made.

(i) Notwithstanding any of the above, the CRC may appoint a mediator at any time that it judges such an appointment to be appropriate.

Recommendation #29

The College Relations Commission should substantially revise its procedures for conducting supervised votes with a view to improving the effectiveness of supervision.

Recommendation #30*

A new CAAT pension plan should be developed with one half of the pension board's members being union representatives. The chair of the pension board should be a neutral, appointed by the government following consultation with the colleges and the union, who shall only cast a vote in the event of a tie.

Recommendation #31*

The prohibition on the negotiation of superannuation (pensions) should be removed from the Colleges Collective Bargaining Act.

Recommendation #32*

The mandate of the CRC should be amended to include all judicial and quasi-judicial functions relating to collective bargaining in the colleges, including, but not limited to, matters of certification, the composition of bargaining units, determination of unfair labour practices, and charges of bad faith bargaining.

Recommendation #33

A further $200,000 should be appropriated for its annual budget to add a colleges employee relations officer, to fund the development and maintenance of a colleges' collective bargaining data base, and to offer a program for local employee relations improvement to the colleges.

Recommendation #34

The College Relations Commission should review its procedures for carrying out supervised votes in the colleges and work with both union representatives and representatives of college administration to streamline and improve these procedures.

Recommendation #35

Parties should select bargaining team members for their interpersonal skills as well as for their knowledge of the issues.

Recommendation #36

Parties should prepare all bargaining team members thoroughly so that the inexperienced members are aware of the emotional demands of negotiations and how to cope with them.

Recommendation #37

Parties should prepare and discuss an explicit statement of the desired relationship which should emerge from bargaining, review this statement periodically during the negotiations and review all communications about the bargaining process against the explicit statement developed above.

Recommendation #38

Parties should jointly, during bargaining, take some time to discuss the relationship that is emerging from bargaining as well as the substantive issues.

APPENDIX

Statement of Expenditures
April 1, 1987 - March 31, 1988

Categories	Budget Allocation $	Actual Expenditures $
Transportation & Communications		
Communications	500	0
Postage, Courier	500	137
Travel - Conferences	2 000	0
Accommodation & Food	0	254
Air Travel	0	277
Road Travel	0	155
Travel - Other	7 000	7 621
Total Transportation & Communications	10 000	8 444
Services		
Services	(2 400)	0
Other Communications	2 000	0
Catering	2 000	695
Per Diems	5 000	495
Professional Services	24 000	0
Professional Services, Commercial	0	14 900
Other Services	35 000	33 402
Total Services	65 600	49 492
Supplies & Equipment		
EDP Equipment	0	13 030
Office	500	161
Books	1 500	5 380
Total Supplies & Equipment	2 000	18 571
Total Budget Allocation Total Actual Expenditures	77 600	76 507